

OGC 69-1840

26 September 1969

MEMORANDUM FOR: Deputy Director for Support

SUBJECT: S. 782

In accordance with your recent request, some comments herewith on the several points you raised in our conversation concerning S. 782. As you indicated, it is too early to know what language will actually be enacted, if indeed any is. To that extent these comments therefore are somewhat premature. Our comments to a considerable degree merely affirm the substance of our conversation the other day:

a. Section 4 authorizes suits by government employees and applicants for employment against government officers, and persons acting under the authority of such officers, when the latter have violated or are threatening to violate the act to the detriment of the employee or applicant. In such suits the court may "issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation." Although nearly all of the forms of relief specified in the quotation are in the nature of court orders compelling the government employee not to violate the act, or ordering him to cease violating, it is believed a judgment or decree affording the plaintiff "complete relief" could take the form of an award of monetary damages to the plaintiff. It is noted that if the amendment recently proposed by the Agency to Section 7, page 19, line 16, is included in the enactment, neither Section 4 nor Section 5 of the act would seem particularly harmful to the Agency.

b. We agree also that Section 5 authorizes the Board on Employees' Rights to order the suspension without pay of an offending officer or employee "from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office." It would appear that the Board does not have the authority to order the termination of an employee. Further, it may be that an agency could negate an order by the Board that the employee be suspended without pay from his position by transferring him to another position.

c. I see nothing in the bill which would preclude the Agency from so organizing its files that the personnel file of an applicant or employee contains only matters relevant to him as an employee, and not include information concerning the component or function of the Agency which led to his recruitment.

[Redacted]

STAT

Associate General Counsel

cc: OLC [Redacted]

OGC [Redacted]

Distribution:

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